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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DAJUAN MALCOLM JACKSON,

Defendant and Appellant.

B203986

(Los Angeles County
Super. Ct. No. BA316158)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Stephen A. Marcus, Judge. Affirmed.

Linda Acaldo, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Yun K. Lee and
Ana R. Duarte, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Dajuan Malcolm Jackson of mayhem, corporal injury to a spouse or cohabitant, and assault with a deadly weapon, arising out of his stabbing of his girlfriend, Nalgia Myers. He argues that the court committed prejudicial error by allowing the jury to hear the tape of the victim's 911 call, by giving jury instructions on flight, and by giving an instruction on expert testimony related to the testimony of the nurse who treated the victim at the hospital. We find no error and affirm.

BACKGROUND

On August 17, 2007, an amended four-count information charged Jackson with attempted murder (Pen. Code, §§ 664, 187, subd. (a)), mayhem (Pen. Code, § 203), infliction of corporal injury on a cohabitant (Pen. Code, § 273.5, subd. (a)), and assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)). On September 24, 2007, a jury found him not guilty of attempted murder but guilty of the remaining counts of mayhem, corporal injury to a cohabitant, and assault with a deadly weapon. Jackson waived trial by jury on prior conviction allegations, and the court found the allegations true. The court denied probation, sentenced Jackson to 34 years to life in state prison, and ordered him to pay restitution and fines.

On the morning of January 24, 2007, at around 8 a.m., Myers called 911 from the apartment of her aunt, Rosita Haylock, on West Florence Avenue in Los Angeles. She told the operator she needed an ambulance because "I just got stabbed up." In the recording of the call she can be heard saying, "Hurry up, hurry up . . . just leave, Dajuan, just leave." She told the operator the person who stabbed her was just leaving, and that it was her boyfriend, who she described as Black, stocky, bald, and wearing light blue shorts. She stated that she was stabbed "[i]n my face, my neck, my arms." The operator told Myers to put pressure on the wounds with a clean towel until the medics arrived. Myers told the operator they would have to get through a gate and said she was afraid he might still be in the apartment. The tape also recorded her statement to the arriving officer that "Dajuan stabbed me up His name is Dajuan Jackson."

An ambulance took Myers to the hospital, where a doctor stitched wounds to her face and left forearm. Other wounds, to her upper arm and chest, did not require stitches. Police arrested Jackson on March 1, 2007.

At trial, Myers testified that at the time of the stabbing, she was living with Haylock at the Florence Avenue apartment. Jackson, her long time boyfriend, was staying there too. They slept on two couches in the living room. The day before, they had argued about Jackson's desire to have sex with another woman. Myers told Jackson they should go their separate ways. On the morning of January 24, they woke up and walked to a nearby liquor store and bought two beers. When they returned to the apartment, Haylock had left to take her son to school, and only Myers's paralyzed grandmother was there, confined to her bedroom.

Myers and Jackson sat on the couches drinking beer and Myers called a friend. They continued their conversation about going their separate ways. When Jackson told Myers "I'll kill you," she hung up the phone and Jackson began to stab her. She tried to grab the knife and get away. The knife broke. Jackson smashed the phone Myers had used to call her girlfriend, so Myers moved to the kitchen to call 911. Jackson remained in the living room with the knife on the floor.

When the officers arrived, they found the knife on the living room floor with its tip broken off. Only Myers and her grandmother were in the apartment. After Myers had been taken to the hospital, Haylock returned to find two officers at the door. Haylock cleaned up blood in the living room and found the knife tip in the couch Myers had been sitting on when she was stabbed. Haylock put the knife tip in the kitchen and eventually gave it to the police.

Myers returned to the apartment on the evening of the stabbing. The next day, she told the police that Jackson had stabbed her because they were breaking up and identified a photograph of Jackson.

Myers and Jackson soon reconciled. Officer Chapman, one of the officers who had responded to the 911 call, saw Myers enter the apartment security gate with Jackson on March 1, 2007, at 4 p.m. The gate had locked, and Officer Chapman asked Jackson to

open it, but instead Jackson walked through the apartment complex to the rear while Myers entered her aunt's apartment. Another officer ran to the rear of the complex while Officer Chapman called for assistance. Officer Chapman pursued Jackson in the patrol car when he saw Jackson exit onto Florence Avenue. Jackson ran and jumped a fence, where he was surrounded by other police units and arrested.

The defense theory was that a third party had stabbed Myers. Jackson testified that Myers was angry about his request to have sex with another woman. On the morning of January 24, they went to the liquor store, bought beer, and drank it at the apartment. Myers was still angry, and when a woman named Andrea walked by the apartment, Myers accused Jackson of sleeping with her. He told her that he had not, but he had Andrea's telephone number on his cell phone. Jackson tried to calm Myers down, but she got off the couch and headed to the kitchen. Jackson went to the bathroom to avoid the confrontation. From there, he heard the women's voices threatening each other, and then a rumbling noise. He came out of the bathroom and saw Andrea stab Myers by the door of the apartment. He took the knife from Andrea and Andrea ran away. He chased her and then returned to call 911. Myers took the kitchen phone from him and called 911 herself. He left when she told him to in order to avoid trouble because he was on parole. He testified that he was on parole for a 1999 conviction for assault with a firearm.

Jackson also claimed that on March 1, he did not realize that there were police officers in the area until after he had left the apartment complex and was being actively pursued. He only ran for a short distance.

Myers's sister testified that a week after the stabbing, Myers told her that a girl stabbed her. A defense investigator testified that Myers told him the same thing.

ANALYSIS

I. It was not prejudicial error to allow the jury to hear the tape of the 911 call.

During Myers's testimony, the court allowed the prosecution to play the 911 tape for the jury over defense objections. Jackson asserts that the court failed to balance the

probative value of the tape against the probability of prejudice as required by Evidence Code section 352.

Before trial, the prosecution moved to admit the 911 call, and the court and the parties listened to the tape. The prosecution argued that the tape was admissible under Evidence Code section 1240 as a spontaneous declaration, and the defense argued that the tape would violate Jackson's right to confrontation if Myers did not testify at trial. The court granted the motion to admit the tape, adding that it would consider later whether anything was "so highly prejudicial to the defendant that I must keep it out."

The prosecutor described the 911 call in her opening statement. The defense also described the call, emphasizing that Myers was talking to Jackson during the call but not screaming that he was trying to kill her. Myers did testify, and during her testimony, the defense again objected to playing the 911 tape, arguing that there was nothing on the tape to impeach Myers and asking that the tape recorder be turned off before she named Jackson. The prosecution argued that the tape was probative of Myers's state of mind and that it corroborated her testimony. The court stated it might exclude the tape because it was simply bolstering Myers's testimony "and there are some 352 concerns I have." The court allowed the prosecution to play just enough of the tape to allow Myers to identify her voice.

Later, the court stated that it had "read the tape" and that it provided additional detail. The court added that it would probably admit the tape, but that it would make a final decision only after hearing the defense's cross-examination of Myers.

After a recess, the court indicated that it had changed its mind and ruled that the tape was admissible as an excited utterance, had nothing to do with impeachment, and so was not dependent on the cross-examination. The prosecutor stated that the probative value of the tape outweighed any prejudice to Jackson. The defense did not argue prejudice, but instead contended that under section 352, the tape was cumulative and should be excluded. The court responded, "I'm not going to do that . . . because . . . I can see some evidentiary value as to that tape" in its additional detail and the "emotional impact of what she's feeling." The court added that, "I may leave that open if we keep

trying to put evidence on top of evidence as to what she said,” and “[a]t some point I will entertain a 352.” During the direct examination of Myers, the jury heard the tape, with a transcript as an aid. The defense made no further challenge to the tape. Jackson testified that he saw Myers make the 911 call after she grabbed the phone from him and the prosecution argued in closing that the tape showed Myers’s identification of Jackson as her attacker.

The record demonstrates that the trial court weighed the probative value of the 911 tape against the potential for undue prejudice. When the court ruled that the tape was admissible, the defense argued that it was merely cumulative. The court rejected that argument and the jury heard the tape. The court engaged in the required analysis under section 352. We note that, “‘the trial judge need not expressly weigh prejudice against probative value—or even expressly state that he has done so.’” (*People v. Zambrano* (2007) 41 Cal.4th 1082, 1138, fn. 14.)

We defer to the trial court’s ruling under Evidence Code section 352, reversing only for an abuse of discretion. (*People v. Kipp* (2001) 26 Cal.4th 1100, 1121.) The 911 phone call had probative value. The call provided corroborating detail and tended to prove that Jackson, not Andrea, stabbed Myers. That probative value was not outweighed by an unduly prejudicial effect. For the purpose of this analysis, prejudicial does not mean “‘damaging,’ but refers instead to evidence that “‘uniquely tends to evoke an emotional bias against defendant’” without regard to its relevance on material issues.” (*Ibid.*) While damaging to Jackson’s case, the 911 call was relevant to show Myers’s initial reaction to the stabbing and the identity of her assailant.

On appeal, Jackson argues that the playing of the tape was unduly prejudicial, and that the jury should have been presented with the 911 call, if at all, in the form of the transcript only. As described above, the defense never objected at trial to admission of the tape on the ground that it had more prejudicial impact than the transcript, and, therefore, Jackson has waived the issue. (*People v. Holt* (1997) 15 Cal.4th 619, 666.) Nevertheless, we have listened to the tape and conclude that its admission did not create any danger of undue prejudice. The voices of the police and fire dispatchers were

unemotional. Myers was understandably upset, yet her statements to the operator “were descriptive and not highly inflammatory; the superior court not unreasonably concluded that they were more probative than prejudicial.” (*People v. Roybal* (1998) 19 Cal.4th 481, 517).

II. It was not prejudicial error to instruct the jury with CALJIC No. 2.52.

Jackson argues that the trial court erred when it gave the jury the standard flight instruction because there was insufficient evidence that he fled from the scene. The court instructed the jury with CALJIC No. 252: “The flight of a person immediately after the commission of a crime, or after he is accused of a crime, is not sufficient in itself to establish his guilt, but is a fact which, if proved, may be considered by you in the light of all other proved facts in deciding whether a defendant is guilty or not guilty. Whether or not evidence of flight shows a consciousness of guilt, and the significance to be attached to such a circumstance, are matters for your determination.” Jackson claims that the only evidence of “flight” was his leaving the apartment after Myers’s stabbing, and that he left at her request.

A flight instruction is proper where evidence shows the defendant left the scene of the crime “‘under circumstances suggesting that his movement was motivated by a consciousness of guilt.’” (*People v. Roybal, supra*, 19 Cal.4th at p. 517.) “[T]he circumstances of departure must suggest ‘a purpose to avoid being observed or arrested.’” (*People v. Bonilla* (2007) 41 Cal.4th 313, 328.) Jackson left the apartment immediately after the stabbing under circumstances that could show that he knew he was guilty and that he intended to avoid arrest. Jackson did not call 911 or attempt to help Myers after she was stabbed. Myers had identified him as her attacker. Although the jury could have attributed his departure to his desire to avoid police contact because he was on parole, the jury could also have inferred that his leaving was consistent with the prosecution’s theory that he had stabbed Myers, and that he left to avoid arrest.

Jackson also argues that his avoidance of the police on March 1 was not close enough in time to the stabbing to support a flight instruction. But a flight instruction is

proper even in circumstances in which flight is not immediate. (*People v. Howard* (2008) 42 Cal.4th 1000, 1021.) “‘Common sense . . . suggests that a guilty person does not lose the desire to avoid apprehension for [severe] offenses . . . after only a few’ days,” or a month. (*People v. Loker* (2008) 44 Cal.4th 691, 706.) There was no error in giving the flight instruction, and, therefore, the instruction did not violate Jackson’s constitutional rights.

III. It was not prejudicial error to instruct the jury with CALJIC No. 2.80.

At trial, the nurse who had treated Myers at the hospital testified that when Myers came into the emergency room, she was shaken and nervous, telling the nurse that “she was stabbed by her boyfriend because she wanted to end the relationship.” The nurse testified that she was present when the doctor stitched Myers’s wounds, and that it took 20 to 30 minutes on the forearm and two hours (with “really fine, really tiny stitches”) on Myers’s face. The nurse also testified that Myers was in great pain, and testified about the medical records kept by the hospital.

The defense objected to the giving of an instruction on expert testimony, arguing that it would give extra weight to the nurse’s testimony that Myers stated that her boyfriend stabbed her, and that no expert assistance was necessary for the jury to understand Myers’s treatment. The court concluded that the nurse’s medical background and training qualified her to testify about the suturing of Myers’s wounds and why it took so long, and gave the instruction, CALJIC No. 2.80.¹

¹ CALJIC No. 2.80 as given by the court provides:

“A witness who has special knowledge, skill, experience, training or education in a particular subject has testified to certain opinions. This type of witness is referred to as an expert witness. In determining what weight to give to any opinion expressed by an expert witness, you should consider the qualifications and believability of the witness, the facts or materials upon which each opinion is based, and the reasons for each opinion.

“An opinion is only as good as the facts and reasons on which it is based. If you find that any fact has not been proved, or has been disproved, you must consider that in determining the value of the opinion. Likewise, you must consider the strengths and weaknesses of the reasons on which it is based.

On appeal, Jackson asserts that the nurse's testimony did nothing but "tell the jury what the ultimate outcome of the case should be by instructing the jury that appellant was the stabber." He argues that nothing the nurse testified to required specialized knowledge, and the expert instruction was prejudicial because it highlighted the nurse's credibility and gave greater weight to her testimony than it deserved.

We disagree. The nurse testified that Myers's facial wound required two hours of stitching, that the stitching was "tiny," that her forearm required 20-30 minutes of stitching, and that she was in pain and received pain medication. This is not rocket science, but "although expert testimony is generally inadmissible on topics 'so common' that jurors of ordinary knowledge and education could reach a conclusion as intelligently as the expert, an expert may testify on a subject about which jurors are not completely ignorant." (*People v. Lindberg* (2008) 45 Cal.4th 1, 45.) "Rather, the pertinent question is whether, even if jurors have some knowledge of the subject matter, expert opinion testimony would assist the jury." (*People v. Prince* (2007) 40 Cal.4th 1179, 1222.) Jackson was charged and convicted of mayhem, which requires proof that the victim was disabled or permanently disfigured, and the extent and quality of the medical treatment Myers required was relevant to the jury's determination. The jury could see Myers's scars, but the nurse's testimony was useful to establish the extent of the injuries before treatment.

"Expert testimony is allowed on any subject where the witness has 'special knowledge, skill, experience, training or education in a particular subject.'" (*People v. Kurey* (2001) 88 Cal.App.4th 840, 847.) The nurse had medical training and experience in wound treatment, and "[o]nce her testimony was received, it was then up to the fact finder to evaluate that testimony and give it the weight to which it was entitled." (*Ibid.*) The instruction told the jury to consider the nurse's qualifications in deciding what weight to give her testimony, and those medical qualifications would not have led the

"You are not bound by an opinion. Give each opinion the weight you feel it deserves. You may disregard any opinion if you find it to be unreasonable."

jury to give special weight to her testimony about Myers's emergency room statement that Jackson had stabbed her.

Jackson also argues that his conviction must be reversed because of the trial court's cumulative error. Because there was no error in admitting the tape of the 911 call, giving the flight instruction, or giving the expert witness instruction, there was no cumulative error.

DISPOSITION

The judgment is affirmed.

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WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.